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EXAMINER

MASINICK, MICHAEL D

ART UNIT PAPER NUMBER

2125

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/647,342

Applicant(s)

ENEAU ET AL.

Examiner

Michael D. Masinick

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 5/11/2005 have been fully considered but they are not persuasive. Applicant has not amended claim one as exactly suggested and the 112 issue is not yet cleared up.

2. Applicant arguments regarding the art rejections set forth are not persuasive. While they are agreed with in the sense that applicant's invention contains elements that are different from those shown in Mann, the claims as written are vague and can be interpreted in many different ways. The term "workstation" must be taken to mean "a place where work is to be done" and "treatment operation" is taken to mean "an operation where some treatment is carried out".

These simple definitions are entirely different from the arguments presented by applicant which assert that the packages of Mann would not be able to undergo a treatment and there is no workstation. Looking at figure 1 of Mann, the palette on which the packages are situated could be considered a workstation, or the room in which the packages are arriving could be considered a workstation. As far as "treatment", this term can be given many different meanings, but a simple scanning operation of a tag on a package or the application of a certain sticker is a treatment. The same arguments could be made for the Worner patent to provide these features.

3. In response to applicant's argument that the two references may not be combined, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of

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the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, one of ordinary skill in the art would not have taken the packages of Mann and attempted to put them into the freezer of Worner as applicant attempts to show as a reason not to combine the references. One of ordinary skill would have taken the concepts set forth in Mann and Worner, irrelevant of the objects being tracked, and combined them in order to read on the current claims. Worner clearly shows that "it enables the ascertainment of a zone of the storage device in which a sought article is disposed without the user having to access individual zones for that purpose and look in" which is the purpose of the current application.

4. Newly added claims to an oven, refrigerator, and incubator are rejected under USC 103 as being obvious over the combination of Mann and Worner already recited by examiner.

5. Examiner believes that all claim elements have been shown in a variety of forms in both the Mann and the Worner patents and that these references have been properly combined.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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3. The phrase “wherein the component is to be fitted on the body or a garment...” is still vague. “Is to be” implies that the component is not currently fitted on the garment and may be at some time in the future.

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, and 12-14 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,614,351 to Mann et al.

3. Regarding claim 1, Mann shows an installation for the treatment of products, comprising: containers for products to be treated and equipped with means for emitting radiofrequency waves to supply product identification information (Claim 1, line 7), at least one workstation for carrying out a product treatment operation, the workstation being equipped with means for emitting radiofrequency waves to supply workstation identification information (Claim 1, lines 9-36), and a system for managing information relating to the products, the system comprising a database (“causes a record to be stored reporting the access regarding the article” - Abstract), and information processing unit and at least one component itself comprising: at least one antenna for receiving the radiofrequency waves emitted by the emitting means (Fig 1, 3), and means for transmitting, to the information processing unit, identification information received from the

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means for emitting radiofrequency waves so that the information processing unit combines the product and workstation identification information and stores it in the database (abstract), wherein the component may be fitted on the body or a garment of an operator (Column 2, line 24).

4. Referring to claim 2, Mann shows wherein the transmission means comprise a transmitter and the information management system further comprises a corresponding receiver which is connected to the information processing unit (Col 3, lines 19-26).

5. Referring to claim 3, Mann shows wherein the transmitter and the receiver are a radiofrequency wave transmitter and receiver (Col 3, line 13).

6. Referring to claim 4, Mann shows wherein the wave frequency emitted by the emitting means of the containers and the workstations is different from that of the waves emitted by the transmitter of the component (Col 2, lines 52-61 – computer may use bluetooth or other wireless connection).

7. Referring to claim 5, Mann shows wherein the transmission means comprise a wired connection connecting the component to the information processing unit (figure 2).

8. Referring to claim 6, Mann does not show wherein the workstation comprises a device for opening the workstation, and the means for emitting radio frequency waves from the workstation are disposed on or in the vicinity of the opening device. Examiner submits that this claim is extremely vague. For example, if a workstation is considered to be a special room where a container is to be delivered, the door handle of the room would read on this claim. Applicant is asked to more clearly specify the workstation and the reading means therein.



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9. Referring to claim 12, Mann shows wherein the means for emitting radiofrequency waves have an emitting power lower than 10mW (Col 3, lines 47-56). Examiner notes that while the specified example at the top of column 3 uses a tag with approximately 150 mW of power, this is only an example. The actual power used would be a design choice to coincide with the needs of the distances specified in Mann in the passage shown.

10. Referring to claim 13, Mann shows wherein the means for emitting radiofrequency waves are passive (Col 3, line 5).

11. Referring to claim 14, Mann shows wherein the workstation comprises means for acquiring at least one parameter relating to implementation of the processing operation and a device for transmitting this parameter to the information processing unit in order to associate it with the information for identifying the products treated in the workstation (Col 2, lines 16-21).

12. Referring to claim 15, Mann shows the component comprises at least one antenna for receiving radiofrequency waves and means for transmitting identification information received from the means for emitted radiofrequency waves to an information processing unit (Col 2, lines 45-65)

13. Referring to claim 16, Mann shows wherein the transmission means comprise a transmitter. Examiner notes that this is the one of the basics of RFID technology.

14. Referring to claim 17, Mann shows wherein the transmitter is a radiofrequency wave transmitter. Examiner notes that this is the one of the basics of RFID technology.

15. Referring to claim 18, Mann shows wherein it comprises a wired connection for connecting it to the information processing unit (Figure 3).

16. Referring to claim 19, Mann shows wherein it is a glove (Figure 1).

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17. Referring to claim 20, Mann shows wherein the receiving antenna is accommodated in a finger or the palm of the glove (Figure 1).

*Claim Rejections - 35 USC § 103*

18. Claims 7-11, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,614,351 to Mann et al as shown above in view of UK Patent Application 2 371 722 A by Worner et al (present in applicant's Information Disclosure Statement).

19. Referring to claim 7, Mann does not specifically show wherein the workstation comprises a plurality of sites for accommodating the containers and in that each site comprises means for emitting radiofrequency waves to supply site identification information via the component to the information processing unit.

20. Worner shows a storage workstation system with a plurality of "zones". Each zone contains an antenna for "selective excitation" of transponders mounted on stored articles.

21. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the storage system of Worner as the "workstation" of Mann because "it enables the ascertainment of a zone of the storage device in which a sought article is disposed without the user having to access individual zones for that purpose and look in." (Page 4, paragraph 4 of Worner).

22. Referring to claim 8, Worner shows wherein the information processing unit is adapted to supply signals refuting or confirming that the component is placed in the vicinity of a site in which a container is disposed (Page 4).



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23. Referring to claim 9, Worner shows wherein the information processing unit is adapted to supply signals refuting or confirming that the component is placed in the vicinity of a site in which a container is to be disposed (Page 4, paragraphs 4-5).

24. Referring to claim 10, Mann shows wherein the component is a glove.

25. Referring to claim 11, Mann shows wherein the receiving antenna of the glove is accommodated in a finger or the palm of the glove (figure 1).

26. Referring to claims 21-23, Worner shows the use of a freezer. One of ordinary skill in the art would have found it simple to substitute any temperature or atmospheric regulating device for the freezer as required by the specific application.

### *Conclusion*

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

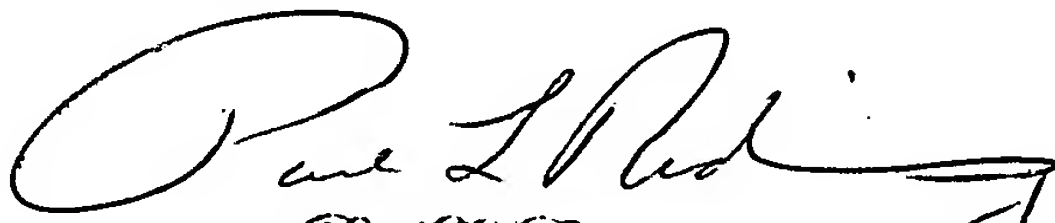
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MDM

  
*Paul L. Rodriguez*  
\_\_\_\_\_  
Primary Examiner  
Art Unit 2125

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5/20/05